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**Mandated areas**

# Information received from Governments

## Note by the Secretariat

**Addendum**

## Colombia

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# Information gathered from national experience in implementing the recommendations of the Permanent Forum on Indigenous Issues

1. The 1991 Constitution, in accordance with Convention No. 169 of the International Labour Organization, ratified by Colombia by means of Act No. 21 of 1991, establishes the legal framework that enables the State to recognize and protect the ethnic and cultural diversity of the Colombian nation. Further to this constitutional principle, the Political Charter recognized the equality of all cultures coexisting on national territory, the official status of indigenous languages in their respective territories, the right to an education in keeping with their traditions and customs, a special indigenous jurisdiction to be applied by the indigenous authorities in accordance with their habits and customs, created a special indigenous constituency for the Colombian Senate and Chamber of Representatives and recognized the capacity of the indigenous territories to be territorial entities of the Republic.

**Progress in the legislative field**

2. In the area of furthering the constitutional and legal rights of indigenous peoples, Colombia is ranked first in the list of indigenous legislation submitted by the Inter-American Development Bank to the Second Session of the Permanent Forum on Indigenous Issues.[1] Among the most relevant legislative measures taken by Colombia over the past decade are the following:

- Act No. 48 of 1993, which regulates enlistment and exempts indigenous peoples from military service;
- Act No. 115 of 1993, which provides, inter alia, for special education for ethnic groups;
- Act No. 335 of 1996, which recognizes the right of ethnic groups to access the electromagnetic spectrum, public telecommunications services and State mass media and to establish their own forms of media;
- Act No. 388 of 1997, which, inter alia, determines that municipal land use must take account of ethnic and cultural diversity;
- Act No. 397 of 1997, the General Culture Act, which recognizes the rights to collective authorship and archaeological heritage and supports ethnoeducation programmes and the dissemination of indigenous heritage through the media;
- Act No. 715 of 2001, which regulates the territorial entities' share of national revenues and assigns a portion of those revenues to the indigenous reservations;
- Act No. 756 of 2002, which regulates the State's right to collect royalties from the exploitation of non-renewable natural resources and provides that, when such exploitation takes place less than five kilometres from indigenous reservations, 20 per cent of those royalties must be handed over to them;

[1] Indigenous Peoples and Community Development, Databank on Indigenous Legislation, 1999-2003 IADB, http://www.iadb.org/sds/ind/index_ind_e.htm.

- Act No. 685 of 2001, which establishes the Mining Code and recognizes indigenous mining areas in which indigenous peoples have preferential rights over exploitation for their own benefit;
- Act No. 812 of 2003, which approves the "National Development Plan: Towards a Community State", an entire section of which is given over to the implementation of policies designed to strengthen ethnic groups.

3. By means of a series of regulatory decrees, a mechanism was established to allow for consultation with indigenous and black communities when exploratory and exploitation activities involving renewable and non-renewable natural resources are scheduled to take place in their territories. The two largest consultation bodies are the Permanent Committee for Consultation with Indigenous Peoples and the Indigenous Peoples' Human Rights Commission.

4. Examples of the considerable progress made in the area of indigenous rights are the resources earmarked by the State for indigenous health services and the number of transfers of indigenous territories classified as reservations to the State.

**Health**

5. Act No. 691 of 2001 guarantees indigenous peoples the right to access and participate in health services in an appropriate and dignified manner and with due respect for and protection of the ethnic and cultural diversity of the State. The rules governing social security provide that anyone without sufficient income qualifies for a subsidized scheme. The national Government has supported the establishment of a working group composed of representatives from indigenous organizations and communities, which has drawn up a set of proposed implementing regulations for Act No. 691 which will be discussed with the Ministry of Social Welfare.

6. The reports available to date indicate that 500,198 indigenous individuals are covered by the health subsidy scheme, which represents an investment by the State of 90,184,679,204 pesos, or over $30 million[2] per year. Of that number, about 410,000 indigenous individuals are affiliated to companies established by their own organizations and authorities. Recently, the President of the Republic stated that, by the end of his term of office, all indigenous people would be covered by the health subsidy scheme.

**Autonomy and development**

7. On the initiative of the national Government, the Congress of the Republic is currently discussing a draft Land-Use Act, giving effect to article 286 of the Political Constitution, regarding the composition of indigenous territorial entities. If this draft is approved, it will represent an essential step forward in the pursuit of autonomy and development for Colombia's indigenous populations, since, in addition to being governed by their own authorities, indigenous territories will be able to benefit directly from the revenues transferred to them by the State, set their own taxes and manage necessary public services in accordance with their global living plans.[3]

[2] Calculated at an exchange rate of 2,724 Colombian pesos to the dollar.

[3] "A tool designed by indigenous peoples with the guidance of their authorities which allows them to preserve their ethnic and cultural integrity with a view to creating the conditions for their future development as separate social and cultural groups".

8. At present, 746 territories classified as reservations[4] are held by Colombia's indigenous peoples. They cover an area of 31,066,430 hectares[5] in which 733,770 individuals live.[6] This area represents about 27 per cent of the total territory of Colombia and comprises a huge variety of ecosystems, in particular the 22 million hectares belonging to the indigenous peoples located in the Colombian Amazon.

9. The Constitution of Colombia recognizes the right of reservations to a share in resources transferred by the State to subnational territorial entities. The act governing that right provides that those resources must be invested in projects and initiatives developed by the indigenous communities themselves in the areas of education, health and basic sanitation, housing and rural development. The total resources transferred between 1994 and 2003 amounts to 387,931 million pesos, or $142.4 million. For the current year (2004), the resources allocated to legally established indigenous reservations that have been reported to the National Department of Planning by the National Administrative Department of Statistics (DANE) amount to 67,440,400 pesos, or $24,757,000. These resources are distributed according to the size of the population of the indigenous reservation in question as a proportion of the total indigenous population as recorded by DANE.

10. In addition, resources from the State and the United Nations World Food Programme amounting to 5,061,034 pesos, or $1,857,900, have been used to finance production projects in indigenous communities, and 6,820,312 pesos, or $2,526,000, are available in the form of soft loans for the financing of new initiatives.

11. A negotiated policy for the management of protected areas that overlap with indigenous reservations is being prepared in consultation with representatives of indigenous communities and organizations.

**Education**

12. On the basis of the constitutional principle that recognizes the ethnic and cultural diversity of the Colombian nation, the Ministry of Education has drawn up guidelines for the development of ethnoeducation programmes for indigenous peoples. In recent months, within the framework of the programme to broaden coverage, 500 million pesos have been spent to establish about 700 new school places for indigenous children in the department of Amazonas. In addition, in the department of Cauca, national funds have been used to establish about 2,000 new places.[7]

13. In order to facilitate indigenous young peoples' access to higher education, on 23 April 1988, the Alvaro Ulcue Chocue Scholarship Fund was established. The Fund, with a budget of 1,518,000 pesos for 2002-2003 and 1,200,000 pesos for 2004-2005, has helped 1,469 indigenous young people.

[4] In accordance with article 2 (3) of Decree No. 2164 of 1995, indigenous reservations or reserves are defined as "an area of wasteland with legally defined boundaries inhabited by one or more indigenous communities and allocated by INCORA to those communities so that they may exercise their rights of use and usufruct to the exclusion of third parties".

[5] Report of the Colombian Institute for Rural Development (INCODER), February 2004.

[6] Report of the National Administrative Department of Statistics (DANE), February 2004.

[7] Ministry of Education and National Royalties Fund, 2004.

14. Many public and private universities[8] have taken affirmative action measures to facilitate the entry of indigenous peoples to their academic courses. The special admissions programme for indigenous students of the National University of Colombia stands out, as it allocates 2 per cent of its places on each course in its various locations to indigenous students and provides free enrolment.

**Culture**

15. With a view to reclaiming and strengthening cultural memory, supporting and promoting traditional medicine and knowledge and encouraging the traditional cultural expressions of the indigenous peoples, the national Government, through the Ministry of Culture's ethnoculture programme, contributed to the implementation of 49 cultural projects in 2003 with the donation of 396,000,000 pesos, or $145,374,000.

**Environment and biodiversity**

16. The Colombian State has the duty of protection, promotion and preservation of our country's natural resources and the practical knowledge and innovations of indigenous peoples.[9] Accordingly, Colombia has made progress in establishing mechanisms to define policy guidelines, through such institutional meetings as working groups, inter-sectoral meetings and workshops with the participation of indigenous representatives at the national level, concerning the regulations governing access to genetic resources and the traditional knowledge of ethnic groups, whether or not they are associated with those resources and traditional cultural expressions (folklore).[10] Colombia is seeking to implement an effective mechanism for consultation and participation where the indigenous and tribal peoples of Colombia can give informed prior consent concerning their knowledge and the natural resources in their territories which protects their intellectual property rights, with the aim of respecting the traditions, usages and customs of the indigenous, Black and local communities.

**Human rights**

17. The main enemy of the Colombian people and the most serious threat to the physical and cultural survival of its indigenous peoples are the armed outlaw groups. Therefore, the current Government has chosen as one of its priorities the re-establishment of democratic security in the awareness that the fight against illegal armed groups must be waged in a framework of strict respect for human rights and constitutional guarantees. Defeating violence is an essential condition for achieving development and social justice.

18. The armed conflict has been affecting the indigenous population, as their lands and natural resources have become a focus of dispute for armed illegal groups; they have also established illicit crops and laboratories for processing coca in those territories. The opening of geostrategic corridors, forced recruitment and overriding

[8] There are currently agreements with 92 technical, technological and university higher education establishments.

[9] In accordance with the United Nations Convention on Biological Diversity, article 8 (j) and following.

[10] Recommendations of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

of traditional indigenous authorities by force of arms are some of the most salient causes of forced displacement and violation of the human and collective rights of the aboriginal population.[11]

19. The Office of Ethnic Groups of the Ministry of the Interior and Justice, in association with the Office of the Vice-President of the Republic and the Presidential Commissioner for Peace, work within a national strategy to protect the human and collective rights of ethnic groups and indigenous peoples in particular. The goal of this strategy is to prevent and mitigate the impact of the armed conflict, meet the specific needs of indigenous peoples, reduce displacement, create a national system of care and introduce an ethnicity component into statistics on violations of human rights and international humanitarian law.

20. Another scourge affecting indigenous peoples is the penetration of illicit crops into their territories. With regard to this point, a fundamental component of this policy is the fight against illicit drugs and organized crime, which is aimed at "the dismantling of the production process, trade and consumption of drugs, through forced and voluntary eradication of crops and development in disadvantaged and conflict areas through the implementation of an alternative development programme that creates alternatives for subsistence and income generation in the short term". In accordance with a Constitutional Court judgement to the effect that indigenous peoples should be consulted on the method of eradication of illicit crops in the Colombian Amazon, an agreement was signed with representative indigenous organizations providing for the regulation of the use of coca plants in accordance with their cultural patterns and for the concentrated eradication of illicit crops in this region of the country. With regard to the rights of the indigenous peoples in this zone, it was also agreed to form a regional board for the Amazon to draft a policy document that meets their needs.

**Policy development**

21. The present Government has been promoting some strategies concerning indigenous communities, included in the National Development Plan 2002-2006, which are:

- To establish the Office of the Presidential Commissioner for Ethnic Diversity, who will coordinate with the Ministries to set policies intended to raise the standard of living of the ethnic groups and ensure their participation in decisions affecting them.
- To assist indigenous peoples in planning their own lifestyle in accordance with their cosmology. The State will appropriate the resources for their development and execution and will also guarantee the observance of international

[11] Violations of the civil and political rights of indigenous and Afro-Colombian communities are aggravated, moreover, by problems stemming from efforts by the illegal armed groups to maintain control over their territories. They are often subjected to economic blockades, controls on food and medical supplies and restrictions on the free movement of persons, all worsening the precarious conditions in which they live. The presence of armed groups in the territories of these communities also affects their right to independence, threatens the ability of their authorities to govern and erodes their cultural identity. (Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2003/13.)

conventions and treaties for the full enjoyment of the rights of indigenous peoples.

- To take special emergency measures to guarantee human rights and reverse the negative effects stemming from the armed conflict.
- To make progress in the process of establishment, rehabilitation and expansion of reservations, through the acquisition of property, giving priority to the most vulnerable communities and those located in the conflict zone.
- To make progress in programmes for conservation, management and sustainable use of natural resources in indigenous territories in harmony with their ways of life.
- To design a strategy for preventive measures and care concerning forced displacements and violations of their human, collective and cultural rights of indigenous people, and to provide support and disseminate information about experiences with peaceful resistance to the armed conflict. An ethnicity variable will be introduced into national statistics and records on the impact of the armed conflict.
- To complete the catalogue of indigenous rights through legislation in such areas as the special jurisdiction, provision of health care and education, prior consent, natural resources, the regime governing intellectual and cultural property rights and access to resources, with the participation and consensus of traditional leaders and representative organizations.

22. The delegation that represented the Colombian Government at the second session of the United Nations Permanent Forum on Indigenous Issues stated that:

A. The Colombian Government is working to improve the human rights situation our country is experiencing, in particular indigenous peoples, who are victims of the actions of armed outlaw groups. Therefore, the Colombian Government requested assistance and support in its commitment to protect the human and collective rights of indigenous peoples and endorses the request of Colombian indigenous organizations for the Chairperson of the Forum to visit Colombia, accompanied by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, on an unofficial basis.

B. As some indigenous organizations, including some from the Colombian Amazon, are preparing to assume responsibility for providing education to their communities, it requested the commitment and active support of UNESCO for this experiment, which we believe could constitute a pilot programme for Latin America.

C. It requested the Pan-American Health Organization (PAHO), under the "Health Care for Indigenous Peoples" initiative, to include as a pilot project in its strategic outline and plan of action 2003-2007 assistance, support and follow-up to the implementation and execution of indigenous health-care programmes run by indigenous organizations formed for this purpose.

D. The Colombian Government expressed its strong support for the United Nations Permanent Forum on Indigenous Issues and will consider all its recommendations, many of which are already being implemented and represent models which could be made available to countries and organizations participating in the Forum.

E. The Colombian Government declared itself a "friend of the Forum" and announced its commitment to initiate a similar expression of support within the Group of Latin American and Caribbean States (GRULAC).

F. It made a commitment to take decisive action, with the participation of the country's indigenous peoples and organizations, to work towards the completion of the United Nations Declaration on the Rights of Indigenous Peoples and, for the purpose of making this instrument a reality, expressed its willingness to consider alternatives that, without changing the spirit of the text, harmonized with the draft submitted by the Working Group.

G. The Colombian Government will continue to observe and promote the Kimberley and Johannesburg Declarations for sustainable development and other instruments aimed at the protection and effective development of the rights of the indigenous peoples of Colombia.

H. Finally, it respectfully recommended the following for the consideration of the Chairperson and other members of the Forum:

(a) At the next session, there should be an opportunity for direct and constructive dialogue between Governments and organizations representing indigenous peoples;

(b) Regional preparatory meetings should be held prior to the Forum;

(c) As input to the deliberations, the report of the President and of each of the members of the Forum as well as the United Nations agencies involved in the various topics being considered, should be available in advance;

(d) The matters to be discussed under each of the general agenda items should be defined more precisely;

(e) The Colombian Government proposed as a special topic for the third session, scheduled for 10 to 21 May 2004, "armed conflict and indigenous peoples", which was approved as a central theme for the fifty-sixth session of the United Nations Sub-Commission on the Promotion and Protection of Human Rights.